



**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN ENERGY NORTHWEST AND CLARK PUBLIC UTILITIES DISTRICT TO
PROVIDE SPECIALTY, TECHNICAL AND/OR PROFESSIONAL SERVICES AS
REQUESTED**

As provided under RCW Title 39, Chapter 39.34, this Agreement for Professional Services (the "Agreement") is by and between Clark Public Utilities District a municipal corporation in the State of Washington, with its principal office located at 1200 Fort Vancouver Way, Vancouver, WA 98663 (hereinafter referred to as "[Clark PUD]"), and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington and doing business by and through its Business Development Fund, with its principal office located at 3000 George Washington Way, Richland, WA 99352 (hereinafter referred to as "Energy Northwest" or "EN").

RECITALS

WHEREAS, the Interlocal Cooperation Act contained in RCW 39.34 authorizes local governments, such as the Parties to this Agreement, to contract for joint conduct of activities which each of the parties is individually authorized to perform to make the most efficient use of their respective resources; and

WHEREAS, Clark PUD desires to obtain cost effective technical and/or professional services to support the needs of Clark PUD, as more fully described and set forth herein; and

WHEREAS, Energy Northwest has the capacity and is willing to perform certain technical and/or professional services for Clark PUD hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, Clark PUD finds that Energy Northwest is qualified to perform the services, all relevant factors considered, and that such performance will be in furtherance of Clark PUD's business; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the Parties hereto agree as follows:

1. AUTHORITY AND PURPOSE

1.1 This agreement is executed pursuant to Chapter 39. 34 Revised Code of Washington (RCW) as a cooperative endeavor of the Parties, as follows:

1.1.1. RCW 39.34.010 permits **local governmental units to make the** most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

1.1.2. Pursuant to RCW 39.34.080, each Party is authorized to contract with any one or more public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided that such contract shall be authorized by the governing body of each Party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

1.2 The purpose of this Agreement is to establish a contractual relationship under which Clark PUD can procure specialty, technical or professional services from Energy Northwest and Energy Northwest can avail its employees for that purpose on an “as needed” basis to support needs of Clark PUD, and to set forth the Parties respective rights, obligations, costs, and liabilities for this undertaking.

1.4 Filing: This Agreement shall be effective only upon execution by the parties and filing with the Clark County Auditor and/or posting an electronic copy of the Agreement on the Parties’ respective websites in compliance with RCW 39.34.040.

2. SCOPE OF WORK

2.1 The “Services” Energy Northwest may provide under this cooperative Agreement are limited to:

- Membership subscription services in American Public Power Association’s Demonstration of Energy & Efficiency Development (DEED) program

2.2 Services provided by Energy Northwest shall not conflict or interfere with work conducted by Clark PUD’s Employees.

3. TERM

The duration of this Agreement, subject to its other provisions, shall be from its effective date when executed by both Parties, until terminated by either Party consistent with the terms and conditions set forth in this Agreement.

4. PAYMENT AND INVOICING TERMS

4.1 Payment for Services Clark PUD shall pay Energy Northwest as follows:

Charges will be invoiced to Clark PUD by Energy Northwest and will provide detail on the number of hours chargeable, travel and subsistence charges, and any special services delivered as they are ordered/approved by Clark PUD.

4.2 Invoicing Invoices will be submitted monthly by Energy Northwest for payment by Clark PUD. Payment is due upon receipt and is past due thirty days from receipt of invoice. If Clark PUD has any valid reason for disputing any portion of an invoice, Clark PUD will so notify Energy Northwest within seven calendar days of receipt of invoice by Clark PUD, and if no such notification is given, the invoice will be deemed valid. The portion of an invoice which is not in dispute shall be paid in accordance with the procedures set forth herein. That portion of the invoice in dispute shall be resolved in accordance with Section 6.7 of this Agreement within thirty (30 days) of the receipt by Energy Northwest of the notice from Clark PUD as provided in this section.

Any attorney fees, court costs, or other costs incurred by Energy Northwest in collection of delinquent accounts shall be paid by Clark PUD.

4.4 Taxes Clark PUD shall pay all state, local sales and use taxes applicable to goods and services provided under this Agreement. Energy Northwest shall include sales tax charges, separately identified, in the Energy Northwest invoices to Clark PUD.

5. CHANGES

Clark PUD may, with the approval of Energy Northwest, issue written directions within the general scope of any Services to be ordered.

6. STANDARD OF CARE -WARRANTY

Energy Northwest warrants that services shall be performed by personnel possessing competency consistent with applicable industry standards. Such warranty will be effective for a period of thirty days from the date of acceptance of the performance of such service. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed.

Clark PUD's exclusive remedy for any claim relating to this Agreement will be for Energy Northwest, upon receipt of written notice, either (i) to use commercially reasonable efforts to cure, at its expense, the matter that gave rise to the claim for which Energy Northwest is at fault, or (ii) return to Clark PUD the fees paid by Clark PUD to Energy Northwest for the particular service provided that gave rise to the

claim, subject to the limitation contained in Section 8.2. For the foregoing warranty and remedy to apply, written claim must be made to Energy Northwest as soon as reasonably practicable after the non-conformance is detected by Clark PUD and in no event later than the expiration of the aforesaid warranty period. Clark PUD agrees and hereby acknowledges that this remedy is adequate and serves its essential purpose.

THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY PROVIDED BY ENERGY NORTHWEST CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.

6.1 Survival Article 6 shall survive the expiration or termination of this Agreement for any reason.

7. RESERVED

8. MISCELLANEOUS

8.1 Insecurity and Adequate Assurances If reasonable grounds for insecurity arise with respect to Clark PUD's ability to pay for the Services in a timely fashion, Energy Northwest may demand in writing adequate assurances of Clark PUD's ability to meet its payment obligations under this Agreement. Unless Clark PUD provides the assurances in a reasonable time and manner acceptable to Energy Northwest, in addition to any other rights and remedies available, Energy Northwest may partially or totally suspend its performance while awaiting assurances, without liability to Clark PUD.

8.2 Severability Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. Any provision shall nevertheless remain in full force and effect in all other circumstances.

8.3 Waiver Waiver or breach of this Agreement by either party shall not be considered a waiver of any other subsequent breach

8.4 Independent Contractor Energy Northwest is an independent contractor to Clark PUD; no personnel furnished by Energy Northwest shall be deemed under any circumstances to be the agent, employee or servant of Clark PUD.

8.5 Termination Any party shall have the right to terminate this Agreement with or without cause at any time during the initial or extended term of this Agreement by giving thirty days' written notice of the termination to the other party by regular mail to the person identified in Section 9.6. Termination will be effective on the 31st day from the date the written notice was sent.

8.6 Notices All notices or other communications hereunder shall be in writing and shall be deemed given when delivered to the address specified below or such other address as may be specified in a written notice in accordance with this Section.

If to Energy Northwest:
Energy Northwest
Attn: Tim Nies
P. O. Box 968, MD1035
Richland, WA 99352-0968
Telephone: (509) 372-5364
Fax: (509) 377-4357
Email: tmnies@energy-northwest.com

If to Clark PUD:
Attn: Dan Bedbury/Director of Energy Resources
PO Box 8900
Vancouver, WA 98668
Office Phone: (360) 992-3136

Any party may, by notice given in accordance with this Section to the other parties, designate another address or person or entity for receipt of notices hereunder.

8.7 Assignment This Agreement is not assignable or transferable by either party without the written consent of the other party, which consent shall not be unreasonably withheld or delayed.

8.8 Disputes Energy Northwest and Clark PUD recognize that disputes arising under this Agreement are best resolved at the working level by the parties directly involved. Both parties are encouraged to be imaginative in designing mechanism and procedures to resolve disputes at this level. Such efforts shall include the referral of any remaining issues in dispute to higher authority within each participating party's organization for resolution. Failing resolution of conflicts at the organizational level, then the parties may take other appropriate action subject to the other terms of this Agreement.

8.9 Section Headings Title and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

8.10 Representations; Counterparts Each person executing this Agreement on

behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

8.11 Residuals Nothing in this Agreement or elsewhere will prohibit or limit Energy Northwest's ownership and use of ideas, concepts, know-how, methods, models, data, techniques, skill knowledge and experience that were used, developed or gained in connection with this Agreement. Energy Northwest and Clark PUD shall each have the right to use all data collected or generated under this Agreement.

8.12 Non-solicitation of Employees During and for one year after the term of this Agreement, Clark PUD will not solicit the employment of, or employ Energy Northwest's personnel, without Energy Northwest's prior written consent.

8.13 Cooperation Clark PUD will cooperate with Energy Northwest in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Clark PUD agrees that the Energy Northwest's performance is dependent on Clark PUD's timely and effective cooperation with Energy Northwest. Accordingly, Clark PUD acknowledges that any delay by Clark PUD may result in Energy Northwest being released from an obligation or scheduled deadline or in Clark PUD having to pay extra fees for Energy Northwest's agreement to meet a specific obligation or deadline despite the delay.

8.14 Governing Law and Interpretation. This Agreement will be governed by and construed in accordance with the laws of Washington, without regard to the principles of conflicts of law. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in courts of the State of Washington, in Benton County.

8.15 Entire Agreement; Survival This Agreement, including any Exhibits, states the entire Agreement between the parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the parties respecting the subject matter hereof, and supersedes any and all prior understandings, representations, warranties, agreements or contracts (whether oral or written) between Clark PUD and Energy Northwest respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the parties hereto.

8.16 Force Majeure Energy Northwest shall not be responsible for delays or failures (including any delay by Energy Northwest to make progress in the prosecution of any Services) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third parties.

8.17 Use By Third Parties Work performed by Energy Northwest pursuant to this Agreement are only for the purpose intended and may be misleading if used in another context. Clark PUD agrees not to use any documents produced under this Agreement for anything other than the intended purpose without Energy Northwest's written permission. This Agreement shall, therefore, not create any rights or benefits to parties other than to Clark PUD and Energy Northwest.



8.18 Entity Status This Agreement shall not require formation of any new governance entity. No property will be acquired or held, and no joint board or administrator is necessary to accomplish the purpose of this Agreement.

8.19 Audits Clark PUD, shall, during the life of this Agreement, and for a period of three (3) years from the last day of the Agreement term, and at its sole expense, retain accurate books, records and original documentation (or to the extent approved by Energy Northwest, photographs, or other authentic reproductions) which shall be freely disclosed to Energy Northwest, its representatives, the Washington State Auditor, and the Bonneville Power Administration, to permit verification of performance and Energy Northwest's entitlement to payment under this Agreement, and to support any change requests, termination claims or any other claim submitted by Energy Northwest. A copy of these records shall be available to Energy Northwest upon Energy Northwest's request.

8.20 Public Records In the event public record act requests are received by either party for records associated with this Agreement, the parties shall cooperate for purposes of responding to such requests.

8.21 Non-Discrimination The parties agree not to discriminate in the performance of this Agreement on the basis of race, color, national origin, sex, age, religion, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental, or sensory handicap.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last below written:

ENERGY NORTHWEST <small>DocuSigned by:</small>  <small>4DB4209FC7224E6...</small>	CLARK PUBLIC UTILITIES DISTRICT <small>DocuSigned by:</small>  <small>B954A3862F8849F</small>
Name: Sherri Schwartz	Name: Rena Wilber
Title: Procurement Specialist III	Title: CEO/General Manager
Date: 7/22/2020	Date: July 21, 2020